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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/828,470	04/06/2001	Richard W. Layne	41914.551 / P0031752.01	6760
46333	7590	10/06/2009		
Medtronic Attn: Noreen C. Johnson, IP Legal Department 2600 Sofamor Danck Drive Memphis, TN 38132			EXAMINER NGUYEN, CAMTU TRAN	
			ART UNIT	PAPER NUMBER
			3772	
			MAIL DATE	DELIVERY MODE
			10/06/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/828,470

**Applicant(s)**

LAYNE ET AL.

**Examiner**

Camtu T. Nguyen

**Art Unit**

3772

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 4, 12, 23 and 24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 12, 23 and 24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_  
Paper No(s)/Mail Date: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

This Office Action is responding to applicant's After Final amendment filed on 9/17/2009. Claim 24 has been amended.

The Objections to the drawings has been withdrawn in view of applicant's response.

The 112, 1<sup>st</sup> & 2<sup>nd</sup> paragraph rejections have been withdrawn in view of applicant's response.

The rejection associated with the Kuslich et al reference has been withdrawn in view of applicant's response, as it does not constitute proper prior arts against applicant's instant invention.

Applicant remarked that the Reiley et al reference does not disclose a "platform" serving as a barrier to direct the expansion/inflation of the balloon structure. Such remarks have been carefully considered and deemed persuasive.

The Final Action of 7/20/2009 has been withdrawn in view of applicant's remarks.

The claims, however, are rejected as follows in view of the Reiley et al/Berger presented below.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 12, 23, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reiley et al (U.S. Patent No. 6,248,110) in view of Berger (U.S. Patent No. 5,545,136).

Figure 4 illustrates a hollow body (50) including a circumferential wall having a distal end, the hollow body (50) also comprising an extension that protrudes from the circumferential wall beyond the distal end but the hollow body (50). Figure 4 illustrates an expandable (56) structure.

With regards to claim 4, Figure 5K(1) illustrates the expandable structure (56) displaces a portion of the cortical bone (28) within bone (32).

With regards to claim 12, bone filling material, such as artificial bone substitute or flowable synthetic bone material or methyl methacrylate bone cement is known in the art of bone filling.

With regards to claim 23, Figures 5K(1) illustrates the hollow body (50) & its expandable structure (56) are introduced into a vertebral body (26) wherein the interior volume (30) thereof occupied by cancellous bone (32).

The Reiley et al does not teach a platform that is open in a radial direction and has a side surface facing the radial direction.

Berger discloses in Figures 1, 2 & 6 illustrates a hollow catheter (12), the distal end of the catheter is extended by a platform that is open (22) in a radial direction and has a side surface facing in the radial direction.

Therefore, it would have been obvious to one skilled in the art to modify the distal end of Reiley et al's hollow body (50) such that it would include an extension/platform extending

beyond the distal end, such extension/platform having an opening (22) open radially & a side surface, taught by Berger, for purposes of serving as a barrier to induce the balloon (25) to expand through the opening (22) radially away from the side surface of the platform (see Figure 6 in Berger reference).

With regards to claim 24, the Reiley et al, modified by Berger, now renders the catheter tube (50) having an extension/platform extends beyond the distal end of catheter tube (50) from only a circumferential portion of the catheter tube's (50) circumferential wall, yielding the extension/platform extending from only a circumferential portion of the catheter tube's (50) circumferential wall and not the entire circumferential wall.

The Reiley et al/Berger combination would perform all of the steps in method claim 1.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Camtu T. Nguyen whose telephone number is 571-272-4799. The examiner can normally be reached on (M-F) 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Camtu T. Nguyen/  
Examiner, Art Unit 3772

/Patricia Bianco/  
Supervisory Patent Examiner, Art Unit 3772